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11

12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 BOARDS OF TRUSTEES OF THE SHEET
15 METAL WORKERS LOCAL 104 HEALTH
16 CARE TRUST, et al.,

17 Case No.: C13-4194 EMC

18 **JUDGMENT PURSUANT TO
19 STIPULATION**

20 Plaintiffs,

21 v.

22 JET MECHANICAL, INC., a California
23 corporation,

24 Defendant.

25

26 IT IS HEREBY STIPULATED and AGREED (the “Stipulation”) by and between the
27 parties hereto, that Judgment shall be entered in the within action in favor of Plaintiffs BOARDS
28 OF TRUSTEES OF THE SHEET METAL WORKERS, et al. (“Plaintiffs” or “Trust Funds”) and
against Defendant JET MECHANICAL, INC., a California corporation (“Defendant”), and/or
alter egos and/or successor entities, as follows:

29 1. Defendant entered into a collective bargaining agreement (“Bargaining
30 Agreement”), of which Plaintiffs are third party beneficiaries. The Bargaining Agreement is still in
31 full force and effect.

32 2. MARTIN JOHN FLATON, JR. acknowledges that he is the RMO of Defendant
33 JET MECHANICAL, INC. and specifically consents to the Court’s jurisdiction for all proceedings
34 herein. Martin John Flaton, Jr. (hereinafter “Guarantor”) confirms that he is personally

1 guaranteeing the amounts due pursuant to the terms of this Stipulation and further acknowledges
 2 that all affiliates, related entities and successors in interest to JET MECHANICAL, INC. and/or
 3 any subsequent entity wherein Mr. Flaton is a principal shall also be bound by the terms of this
 4 Stipulation as Guarantor, and also consent to this Court's jurisdiction. Defendant and any
 5 additional entities in which MARTIN JOHN FLATON, JR. is an officer, owner or possesses any
 6 controlling ownership interest, including all successors in interest, assignees, and affiliated entities
 7 (including, but not limited to parent or other controlling companies), and any companies with
 8 which JET MECHANICAL, INC. joins or merges, if any, shall also be bound by the terms of this
 9 Stipulation. Defendant and all such entities specifically consent to the Court's jurisdiction, which
 10 shall be specified in writing at the time of any assignment, affiliation or purchase of Defendant,
 11 along with the obligations to the terms herein.

12 3. Defendant has become indebted to the Trust Funds as follows:

13 Work Month	14 Unpaid Contributions	15 20% Liquid. Damages on Reported Contributions	16 10% Interest (through 1/13/15)	17 Total
18 December 2014	19 \$39,186.60	20 \$7,837.32	21 \$0.00	22
23 Delinquent Contributions, Interest & Liquidated Damages (12/14, breakdown above)				\$47,023.92
24 20% Liquidated Damages on Prior Late-Paid Contributions (4/13-7/14; 9/14-10/14)				\$182,743.91
25 10% Interest on Prior Late-Paid Contributions (9/14-10/14)				\$267.85
26 Principal Underpayment per Audit (6/11-12/13)				\$2,153.54
27 10% Interest per Audit				\$213.62
28 20% Liquidated Damages per Audit				\$430.71
Audit Testing Fees				\$215.35
29 Attorneys' Fees (9/17/14-1/5/15)				\$1,583.00
30 Costs (9/17/14-1/5/15)				\$5.86
31 Additional Bond Requirement				\$50,000.00
32 Credit (payment received pursuant to bond claim)¹				(-\$25,000.00)
33 Judgment Total:				\$259,637.76

26 1 Plaintiffs are advised that Defendants' surety is sending a check for \$25,000 in response to its
 27 bond claim. Should this payment not be received, this amount shall be added back into the
 Judgment.
 28

1 4. In addition to the above, Defendant is also responsible for replacing its Surety bond
 2 with the Union / Plaintiff Trust Funds, as a guarantee for its future Trust Fund contributions.²
 3

4 5. Defendant shall *conditionally* pay the amount of **\$68,625.82**, representing all of the
 5 above amounts, less conditionally-waived liquidated damages in the amount of **\$191,011.94**. *This*
 6 *conditional waiver is expressly conditioned upon Trustee approval following timely compliance*
 7 *with all of the terms of this Stipulation*, as follows:

8 a. Beginning on **January 20, 2015**, and on or before the 20th day of each
 9 month thereafter for a period of 24 months, through and including December 20, 2016, Defendant
 10 shall pay to Plaintiffs the amount of **\$3,167.00** per month;

11 b. Payments may be made by joint check, to be endorsed by Defendant prior
 12 to submission. Payments made by joint check may be applied toward Defendants' monthly
 13 stipulated payment provided that the issuer of the joint check is not requesting a release in
 14 exchange for the payment. Joint check payments in which a release is requested may not be
 15 applied toward Defendant's monthly stipulated payment, but shall be deducted from the total
 16 balanced owed under this Stipulation provided the payment is for contributions included in this
 17 Stipulation;

18 c. Defendant shall have the right to increase the monthly payments at any time
 19 and there is no penalty for prepayment;

20 d. Payments shall be applied first to unpaid interest and then to unpaid
 21 principal. The unpaid principal balance shall bear interest at the rate of 10% per annum in
 22 accordance with the Bargaining Agreement and Plaintiffs' Trust Agreements;

23 e. Checks shall be made payable to the ***Sheet Metal Workers of Northern***
 24 ***California Trust Funds***, and delivered on or before each due date to Michele R. Stafford, Esq. at
 25 Saltzman & Johnson Law Corporation, 44 Montgomery Street, Suite 2110, San Francisco,

26

² Replacement of Defendant's Surety bond is not included in the payment schedule described in
 27 Paragraph 5 herein. The current bond amount is \$25,000. Should the Trust Fund determine that a
 lesser amount is required, Defendant shall post a bond in the lesser amount.

1 California 94104, or to such other address as may be specified by Plaintiffs;

2 f. At the time that Defendant makes their 24th stipulated payment, Defendant
 3 may submit a written request for waiver of liquidated damages directed to the Board of Trustees,
 4 but sent to Saltzman and Johnson Law Corporation with their 24th payment. Such waiver will not
 5 be considered until and unless all other amounts are paid in full and Defendant's account is
 6 otherwise current;

7 g. Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise
 8 Defendant/Guarantor in writing, by email to marty@jetmechanicalinc.com, as to the final amount
 9 due, including additional interest and all additional attorneys' fees and costs incurred by Plaintiffs
 10 in connection with the collection and allocation of the amounts owed to Plaintiffs under this
 11 Stipulation. Defendant shall pay all additional interest, attorneys' fees and costs regardless of
 12 whether or not Defendant defaults herein. Any additional amounts due pursuant to the provisions
 13 hereunder shall also be paid in full with the final stipulated payment due on December 20, 2016;
 14 and

15 h. Failure to comply with any of the above terms shall constitute a default of
 16 the obligations under this Stipulation and the provisions of ¶ 11 shall apply.

17 6. In the event that any check is not timely submitted or fails to clear the bank, or is
 18 unable to be negotiated for any reason for which Defendant is responsible, Defendant/Guarantor
 19 shall be considered to be in default of the Judgment entered. If this occurs, Plaintiffs shall make a
 20 written demand to Defendant/Guarantor, by regular mail and email to
 21 marty@jetmechanicalinc.com, to cure said default *within seven (7) days of the date of the notice*
 22 *from Plaintiffs*. If caused by a failed check, default will only be cured by the issuance of a
 23 replacement *cashier's check*, delivered to Saltzman and Johnson Law Corporation within the
 24 seven (7) day cure period. If Defendant/Guarantor elect to cure said default, and Plaintiffs elect to
 25 accept future payments, *all such future payments shall be made by cashier's check* at Plaintiffs'
 26 request. In the event default is not cured, all amounts remaining due hereunder shall be due and
 27 payable on demand by Plaintiffs.

28

1 7. Beginning with contributions due for hours worked by Defendant's employees
 2 during the month of January 2015³, and for every month thereafter until this Stipulation is
 3 satisfied, **Defendant shall remain current in reporting and payment of contributions** due to
 4 Plaintiffs under the current Collective Bargaining Agreement and under all subsequent Collective
 5 Bargaining Agreements, if any, and the Declarations of Trust as amended. The Collective
 6 Bargaining Agreement and Trust Agreements provide that all benefit contributions are due on or
 7 before the tenth (10th) day of the month following the month in which hours were worked and are
 8 delinquent if not received by the twentieth (20th) day of that month.

9 Until this Stipulation is satisfied, Defendant shall **submit originals of all monthly**
 10 **contribution reports and payments to Saltzman and Johnson Law Corporation.** The
 11 contribution reports and payments shall be delivered to Michele R. Stafford, Esq. at Saltzman &
 12 Johnson Law Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, or
 13 to such other address as may be specified by Plaintiffs, by the twentieth (20th) day of each month.
 14 Defendant shall send copies of its contribution reports and payments to the Trust Funds. Failure to
 15 comply with these terms shall constitute a default of the obligations under this Stipulation and the
 16 provisions of ¶ 11 shall apply.

17 8. Beginning with the month of January 2015, and for every month thereafter,
 18 **Defendant shall fully disclose all jobs on which it is working by providing Plaintiffs with**
 19 **fully completed job reports** on the form attached hereto as Exhibit A. Upon request by Plaintiffs,
 20 Defendant shall also provide Plaintiffs with copies of Certified Payroll Reports for any and all
 21 Public Works jobs, or any other job for which Certified Payroll Reports are required. Defendant's
 22 updated monthly job reports and Certified Payroll Reports (if requested) shall be delivered to
 23 Michele R. Stafford, Esq. at Saltzman & Johnson Law Corporation, 44 Montgomery Street, Suite
 24 2110, San Francisco, California 94104, or to such other address as may be specified by Plaintiffs,
 25 or via e-mail to compliance@sjlawcorp.com, by the 20th day of each month.

26

27 ³ Defendants reserve the right to request that the Stipulated Judgment be amended to add January
 28 2015 contributions.

1 This requirement remains in full force and effect regardless of whether or not Defendant
 2 has ongoing work, whether Defendant's account with the Trust Funds is active, or whether
 3 Defendant is signatory to a Collective Bargaining Agreement with the Union. If, for any reason,
 4 Defendant has no work to report during a given month, Defendant shall submit the job report form
 5 (Exhibit A) indicating that there are no current jobs. **Defendant's first job report (regarding**
 6 **January 2015 jobs) is due on or before January 20, 2015.**

7 Failure by Defendant to timely submit fully completed monthly job reports and Certified
 8 Payroll Reports (if applicable) as described above shall constitute a default of the obligations
 9 under this Stipulation and the terms of ¶ 11 shall apply.

10 9. **Audit:** Should the Trust Funds request an audit of Defendant's payroll records in
 11 order to confirm proper reporting and payment of contributions pursuant to the Bargaining
 12 Agreements, any failure by Defendant to comply with said request shall constitute a default of the
 13 obligations under this Agreement, which Defendant/Guarantor shall have ten (10) days to cure
 14 from receipt of written notice from Plaintiffs.

15 (a) In the event that amounts are found due on audit, Plaintiffs shall send a
 16 written demand to Defendant/Guarantor, by regular mail and email to
 17 marty@jetmechanicalinc.com, for payment in full of the amounts found due in the audit, including
 18 a full copy of the audit report and any findings, including contributions, liquidated damages,
 19 interest and audit fees owed.

20 (b) Defendant will be provided with ten (10) days in which to review the audit,
 21 and provide evidence to contest the findings. In the event that Defendant does not agree with the
 22 total found due, Plaintiffs shall provide any additional information or clarification requested by
 23 Defendant in writing within ten (10) days of the request therefor, or as soon as reasonably
 24 possible, and Defendant's time to respond to the audit report or comply with payment
 25 requirements shall then run from the time that Defendant receives Plaintiffs' response. Once the
 26 ten (10) day review period expires, in the event that the audit is not contested, payment in full
 27 shall be delivered to Michele R. Stafford at the address provided above.

28 (c) If the audit is contested, and Defendant provides documentation in support

1 of the dispute, Defendant shall be notified as to whether revisions will be made to the audit. If
 2 revisions are not made, payment will be immediately due.

3 (d) If revisions are made to said audit as a result of the dispute, payment in full
 4 of the revised amount shall be due within ten (10) days of Defendant's receipt of the revised
 5 billing.

6 (e) If Defendant is unable to make payment in full, Defendant/Guarantor may
 7 submit a written request to revise this Judgment, modifying the payment plan (by monthly amount
 8 and/or payment term), to add the amounts found due in the audit to this Judgment, subject to the
 9 terms herein. If the Judgment is so revised, Defendant/Guarantor shall execute the Amended
 10 Judgment or Amendment to Judgment within ten (10) days of Plaintiffs' preparation of said
 11 Amended Judgment or Amendment to Judgment. Failure to execute the revised agreement shall
 12 constitute a default of the terms herein.

13 (f) Failure by Defendant to submit either payment in full or a request to add the
 14 amounts due to this Judgment within ten (10) days of the date due per the terms written above
 15 shall constitute a default of the obligations under this agreement. All amounts found due on audit
 16 shall immediately become part of this Judgment.

17 10. Failure to comply with any of the above terms shall constitute a default of the
 18 obligations under this Stipulation and the provisions of ¶ 11 shall apply. Any unpaid or late-paid
 19 contributions, together with 20% liquidated damages and 10% per annum interest accrued on the
 20 contributions shall be added to and become a part of this Judgment and subject to the terms herein.
 21 In addition, if Defendant fails to replace the bond referenced ¶ 4 herein, that amount shall be also
 22 added to and become a part of this Judgment and subject to the terms herein. Plaintiffs reserve all
 23 rights available under the applicable Bargaining Agreement and Declarations of Trust of the Trust
 24 Funds for collection of current and future contributions, and for any additional past contributions
 25 not included herein as may be determined by Plaintiffs, pursuant to employee timecards or
 26 paystubs, by audit, or other means, and the provisions of this agreement are in addition thereto.
 27 Defendant/Guarantor specifically waives the defense of the doctrine *res judicata* as to any such
 28 additional amounts determined as due.

1 11. In the event that Defendant fails to make any payment required under ¶ 5 above, or
 2 otherwise default on any of their obligations as detailed in this Stipulation, and such default is not
 3 timely cured, the following will occur:

4 (a) The entire balance of **\$259,637.76**, as specified in ¶ 3 above, plus interest,
 5 but reduced by principal payments received from Defendant, in addition to any unpaid
 6 contributions then due plus 20% liquidated damages and 10% per annum interest on the unpaid or
 7 late-paid contributions, plus Defendant's Surety bond or monetary equivalent if not replaced as
 8 described in ¶ 4 herein, shall be immediately due and payable, together with any attorneys' fees
 9 and costs incurred during the term of this Stipulation;

10 (b) A Writ of Execution may be obtained against Defendant/Guarantor without
 11 further notice to Defendant/Guarantor, in the amount of the unpaid balance plus any additional
 12 amounts due under the terms herein. Such Writ of Execution may be obtained solely upon
 13 declaration by a duly authorized representative of Plaintiffs setting forth any payment theretofore
 14 made by or on behalf of Defendant/Guarantor and the balance due and owing as of the date of
 15 default;

16 (c) Defendant/Guarantor waive any notice of Entry of Judgment or of any
 17 Request for a Writ of Execution upon default, and expressly waive all rights to stay of execution
 18 and appeal. The declaration or affidavit of a duly authorized representative of Plaintiffs as to the
 19 balance due and owing as of the date of default shall be sufficient to secure the issuance of a Writ
 20 of Execution, without notice to Defendant/Guarantor; and

21 (d) Defendant/Guarantor shall pay all additional attorneys' fees and costs
 22 incurred by Plaintiffs in connection with the collection and allocation of the amounts owed by
 23 Defendant to Plaintiffs under this Stipulation, whether or not a default occurs herein.

24 12. Any failure on the part of Plaintiffs to take any action against Defendant/Guarantor
 25 as provided herein in the event of any breach of the provisions of this Stipulation shall not be
 26 deemed a waiver of any subsequent breach by Defendant/Guarantor of any provisions herein.

27 13. The parties agree that any payments made pursuant to the terms of this Judgment
 28 shall be deemed to have been made in the ordinary course of business as provided under 11 U.S.C.

1 Section 547(c)(2) and shall not be claimed by Defendant/Guarantor as a preference under 11
2 U.S.C. Section 547 or otherwise.

3 14. Should any provision of this Stipulation be declared or determined by any court of
4 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and
5 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said
6 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this
7 Stipulation.

8 15. This Stipulation is limited to the agreement between the parties with respect to the
9 unpaid and delinquent contributions and related sums enumerated herein, owed by Defendant to
10 Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.
11 Defendant acknowledges that Plaintiffs expressly reserve their right to pursue withdrawal liability
12 claims, if any, against Defendant and all of their control group members, as provided by Plaintiffs'
13 Plan Documents, Trust Agreements incorporated into the Bargaining Agreement, and applicable
14 laws and regulations.

15 16. This Stipulation contains all of the terms agreed by the parties and no other
16 agreements have been made. Any changes to this Stipulation shall be effective only if made in
17 writing and signed by all parties hereto.

18 17. This Stipulation may be executed in any number of counterparts and by facsimile,
19 each of which shall be deemed an original and all of which shall constitute the same instrument.

20 18. Defendant/Guarantor represent and warrant that they have had the opportunity to be
21 or have been represented by counsel of their own choosing in connection with entering this
22 Stipulation under the terms and conditions set forth herein, that they have read this Stipulation
23 with care and are fully aware of and represent that they enter into this Stipulation voluntarily and
24 without duress.

25 ///

26 ///

27 ///

28 ///

19. The parties agree that the Court shall retain jurisdiction of this matter until this
2 Judgment is satisfied.

Dated: January 15, 2015

JET MECHANICAL, INC.

By: _____ /S/
Martin John Flaton, Jr.
RMO Jet Mechanical, Inc.

Dated: January 15, 2015

MARTIN JOHN FLATON, JR.

By: _____ /S/
Martin John Flaton, Jr., Individually as
Personal Guarantor

Dated: January 15, 2015

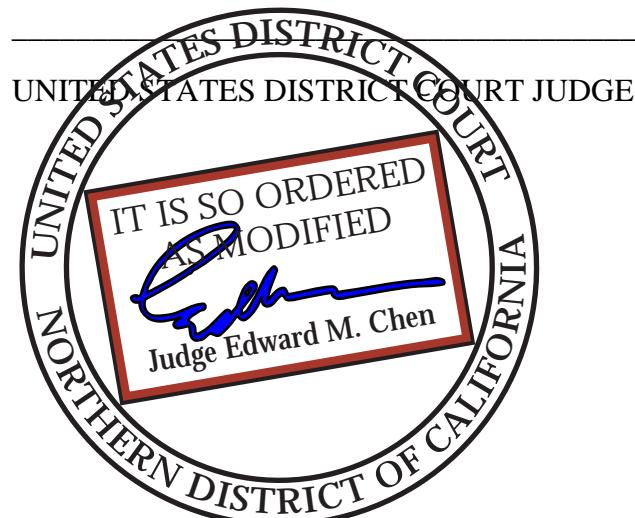
**SALTZMAN AND JOHNSON LAW
CORPORATION**

By: _____ /S/
Michele R. Stafford, Esq.
Attorneys for Plaintiffs

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall retain jurisdiction over this matter. The Clerk of the Court is directed to close this case.

dated: 1/15, 2015



1

EXHIBIT A

2

JOB REPORT FORM

3

*** Updated report must be faxed to Michele R. Stafford, Esq., at (415) 882-9287, or via E-mail to compliance@sjlawcorp.com, by the 20th day of each month ***

4

5

Employer Name: **JET MECHANICAL, INC.**

6

Report for the month of _____, 20__ Submitted by: _____

7

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address:			
General Contractor Telephone #:		Project Manager Name:	
Project Manager Telephone #:		Project Manager address:	
Contract #:		Contract Date:	
Total Contract Value:			
Work Start Date:		Work Completion Date:	
Project Bond #:		Surety:	

17

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address:			
General Contractor Telephone #:		Project Manager Name:	
Project Manager Telephone #:		Project Manager address:	
Contract #:		Contract Date:	
Total Contract Value:			
Work Start Date:		Work Completion Date:	
Project Bond #:		Surety:	

27

*** Attach additional sheets as necessary ***

28

-11-

JUDGMENT PURSUANT TO STIPULATION
Case No.: C13-4194 EMC

1 19. The parties agree that the Court shall retain jurisdiction of this matter until this
2 Judgment is satisfied.

3 Dated: January 13, 2015

By: 
Martin John Flaton, Jr.
RMO Jet Mechanical, Inc.

Dated: January 13, 2015

MARTIN JOHN FLATON, JR.
By: Martin John Flaton
Martin John Flaton, Jr., Individually as
Personal Guarantor

10 Dated: January 13, 2015

**SALTZMAN AND JOHNSON LAW
CORPORATION**

By: _____ /S/
Michele R. Stafford, Esq.
Attorneys for Plaintiffs

14 IT IS SO ORDERED.

15 IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall
16 retain jurisdiction over this matter.

17 | Dated: _____, 2015

UNITED STATES DISTRICT COURT JUDGE